

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 11-212

Complainant:	No. 1425310099A
Judge:	No. 1425310099B

ORDER

The complainant alleged that a superior court judge used a “quid pro quo” system for appointing counsel in certain cases, made an inappropriate comment about a government agency, and unfairly retaliated against the complainant.

The responsibility of the Commission on Judicial Conduct is to impartially determine if the judge engaged in conduct that violated the Code of Judicial Conduct and, if so, to take appropriate disciplinary action. The purpose and authority of the commission is limited to this mission.

After thoroughly reviewing all of the information provided by the complainant, the judge’s response, and the history of the case, the commission decided to dismiss the complaint with a private warning to the judge regarding his obligations under Rules 1.2, 2.8(B), and 2.13 of the Code. The complaint is dismissed pursuant to Rules 16(b) and 23.

Dated: October 21, 2011.

FOR THE COMMISSION

/s/ Louis Dominguez

Louis Frank Dominguez
Commission Chair

Copies of this order were mailed to the complainant and the judge on October 21, 2011.

This order may not be used as a basis for disqualification of a judge.

CONFIDENTIAL

State of Arizona
Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2011-212

COMPLAINT AGAINST A JUDGE

Your name: _____ **Judge's name:** _____ **Date:** August 19, 2011

Instructions: You can use this form or plain paper of the same size to file a complaint. Please describe in your own words what the judge did that you believe constitutes judicial misconduct. Be specific and list all of the names, dates, times and places that will help us understand your concerns. You may attach additional pages but not original court documents. Print or type on one side of the paper only, and keep a copy of the complaint for your files.

In cases _____, Judge _____ entered Orders on August 17, 2011 (Copies attached as Exhibit 1, 2 and 3 respectively). In these Orders, Judge _____ cast dispersions on another governmental agency by referring to its title as "an oxymoron". This conduct would appear to violate Rule 2.3 of Judicial Canon 2.

The substance of each of these orders was a belief that Mohave County had not been paying the appointed Counsel pursuant to prior Court Order. The belief was apparently drawn from conversations with the attorney who has a fee dispute in other matters with Mohave County. It is unclear as to whether the judge was made aware of the entirety of the dispute over improper billings by the attorney or not, but it is clear that a factual determination was apparently made by the judge prior to any inquiry of the county by the judge as to the status of any payments. In two of the payments, all prior claimed amounts had in fact been paid, while the third had an amount that was offset by amounts determined to be overpaid to the attorney as a result of an in depth audit of that attorneys billings to Mohave County. The pre-determination of some fault, or culpability on the part of the county in interfering with, or failing to comply with applicable orders or laws, indicates a lack of impartiality and fairness to the determination of issues. in violation of Rule 2.2 of Judicial Ethics Canon 2.

The Orders in the above referenced cases not so subtly threatens to inappropriately (as discussed below) appoint a Deputy County manager to represent a party if the county does not pay the amounts apparently wrongfully represented to the court to be unpaid to the appointed counsel. This is an abuse of position in attempting to circumvent administrative, contract and statutory law by obtaining an unjustified benefit for the counsel through threat or intimidation in violation of Rule 1.3 of Judicial Ethics Canon 1.

The Orders in the above referenced cases indicate that the court currently has only two attorneys available for appointment to guardianship cases. In approximately early 2010, a meeting was held which was attended by Judge _____. The subject of that meeting was extending the scope of county contracts for legal counsel to the areas of guardianship and probate. At that time Judge _____ indicated he did not wish for those areas to be limited to contract counsel as he had a system which was wholly adequate in which he obtained the service of counsel on cases essentially for free in exchange for referral of cases which could pay fees at a later point (essentially a quid pro quo basis-discussed in greater detail below). It would appear that since that meeting Judge _____ has allowed whatever system he believed sufficient to become insufficient to address the needs of the court. The complainant was able to identify at least three local counsel who are willing to accept appointment on such cases within one day receiving the referenced court order. The fact that Judge _____ would allow his "system" of obtaining counsel to fall into such a sub standard state, without investing the minimal amount of time necessary to check with other attorneys in the area appears to be indicative of a lack of diligence in carrying out his duties in violation of Rule 2.5 of Judicial Ethic Canon 2.

The system of ad hoc/quid pro quo appointment of counsel referred to above, is referenced by Judge _____ in each of the referenced orders as a system where the court has appointed counsel "usually on an ad hoc basis or because counsel for the petitioner was able to obtain a favor from another local attorney". It is the impression of the complainant that this system relied on a quid pro quo referral of paying cases/clients in exchange for free, or discounted service on other cases. This quid pro quo, was apparently coordinated by, or supported by Judge _____. Such a quid pro quo system of engaging in favors to obtain counsel would tend to indicate a level of favoritism and bias treatment of local counsel based on their willingness to engage in such a quid pro quo basis. It is unknown to the complainant what local counsel may have participated in this system of unofficial trading of favors in exchange for compensation. The extent and existence of such a basis for appointment of counsel raises issues of impartiality, fairness, bias, competence and diligence under Canon 2 of the Judicial ethics canons.

-Continued-

(Attach additional sheets as needed)

Judicial Complaint (Continued)

Complainant's name: _____ Judge's name: _____ Date: 8/19/2011

The complainant supervises the division which administers legal services funds for contract, or appointed services to the court. This includes paying for counsel appointed in guardianship and probate cases. In this position, the complainant routinely reviews every claim by appointed counsel in such cases. It is routine and standard for all such counsel to be paid the rate of sixty dollars per hour (\$60.00) which is the current rate for all legal service contracts within Mohave County other than death penalty representation.

In case _____ Judge _____ appointed attorney Elana Sears to represent the ward (Order attached as Exhibit 5). The Order further ordered Mohave County to pay Ms. Sears the rate of forty dollars per hour (\$40.00) AND for the estate to pay an additional forty dollars per hour (\$40.00) for a total hourly rate of eighty dollars per hour (\$80.00). No other counsel has ever been provided dual compensation as government paid counsel at this rate.

In case _____, Judge _____ appointed attorney Elana Sears to represent the ward (Order attached as Exhibit 6). The Order further ordered Mohave County to pay Ms. Sears the rate of sixty dollars per hour (\$60.00) AND for the estate to pay an additional sixty dollars per hour (\$60.00) for a total hourly rate of one hundred twenty dollars per hour (\$120.00). No other counsel has ever been provided dual compensation as government paid counsel at this rate.

The fact that Ms. Sears has been provided differential pay for like work as compared to other counsel who accept appointments as counsel in guardianship and probate cases indicates a preferential treatment of certain counsel by Judge _____ in violation of Canon 2's prohibitions against partiality and unfairness. The existence of this bias is amplified by Judge _____ attempt to force Mohave County to pay claims which have been found to be unfounded and not due and owing, without any examination of the facts, or issues related to such auditing of Ms. Sears' prior claims against Mohave County in all of her appointed work.

On August 18, 2011, Judge _____ issued an Order in _____ (Exhibit 4 attached) which demonstrates a greater extent of Judge _____ bias and inability to be fair and impartial when he states without equivocation or reservation "the other attorney [Ms. Sears] is not being paid by the county [Mohave] for her services" (emphasis added). This statement is blatantly false and based on either a callous disregard of the facts underlying such a supposition, or a deliberate indifference to the veracity of the statement. In either case, the statement is a clear indication of an inability to exercise unbiased and fair judgment in evaluating the full scope of facts and circumstances before issuing such condemnation. Additionally in this Order, Judge _____ appointed the complainant, a Deputy County Manager for Mohave County to represent the prospective Ward. This appointment appears to be of a vindictive nature and punitive in nature, an apparent attempt to coerce Mohave County to pay undue monies to Ms. Sears. The

complainant does not have the capacity to ethically handle such an appointment as a result of time constraints, work load and lack of knowledge or expertise in the area of guardianships. All of this is, or should be readily apparent to Judge _____ who is no stranger to the working of county government. The only explanation for his appointment in this Order is to inappropriately exercise and abuse his power and authority.

In response to Judge _____ Orders in _____, a Position Statement was filed which set forth facts and provided exhibits that clearly demonstrate the fallacy of Judge _____ statements. That Position Statement is also attached (Exhibit 7, although the one thousand four hundred and twenty (1,420) pages of back up financial data and audit material regarding Ms .Sears' prior over payments and subsequent set-offs are not included, although they remain available if deemed pertinent to the investigation of this complaint.

In summary, Judge _____ appears to have engaged in an ongoing pattern of appointing counsel in guardianship and probate matters which indicates a bias, lack of impartiality and favoritism, as well as a lack of dedication, diligence and focus on the duties of the office which he holds. Judge _____ has also indicated a willingness to make final determinations of fact based on one side of a story without regard for his duty to be impartial and serve as a fact finder in such situations. Judge _____ has also demonstrated a level of bias and favoritism by providing preferential rates to a specific attorney to the exclusion of others similarly situated. Judge _____ has also demonstrated a willingness to interject himself into disputes which are not properly before the court, thereby skirting the laws applicable to financial disputes between individuals and governments with respect to notice and demand. In light of the fact that this type of case situation is the only one in which the complainant has any contact with the work of Judge _____ the complainant is concerned as to the breadth and depth to which these issues may permeate other matters before Judge _____ to which the complainant has no exposure.

Exhibits provided in support of this complaint:

1. Court Order of August 17, 2011 in _____ along with copies of the most recent claims of attorney Sears in that case.
2. Court Order of August 17, 2011 in _____ along with copies of the most recent claims of attorney Sears in that case.
3. Court Order of August 17, 2011 in _____ along with copies of the most recent claims of attorney Sears in that case.
4. Court Order of August 18, 2011 in _____
5. Court Order of January 26, 2011 in _____ along with copies of the most recent claims of attorney Sears in that case.
6. Court Order of June 30, 2011 in _____ along with copies of the most recent claims of attorney Sears in that case.
7. Copy of Position Statement filed in _____
(Without exhibits).